

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

TERRY C. ANDERSON,

Defendant.

CASE NO. 8:04CR531

TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the parties’ objections thereto (Filing Nos. 27, 28). See “Order on Sentencing Schedule,” ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The parties have objected to the quantity of controlled substance attributable to the Defendant in ¶ 17 and the corresponding base offense level of 28. The plea agreement reached pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C) requires, among other things, a base offense level of 8. The Court has considered the reasoning set forth in the government's objections. The Court's tentative findings are that, absent unusual circumstances, the Rule 11(c)(1)(C) plea agreement should be upheld and the base offense level should be calculated as level 8.

The Defendant also argues that enhancements in several paragraphs violate the Defendant's Sixth Amendment right to have all enhancing facts proved beyond a reasonable doubt to a jury. As the PSR includes no enhancements, this objection is denied as moot.

IT IS ORDERED:

1. The parties' objections (Filing Nos. 27 and 28) to the PSR are granted, insofar as they relate to ¶ 17;
2. Otherwise, the Defendant's objections (Filing No. 28) are denied as moot;
3. The parties are notified that my tentative findings are that the PSR is correct in all other respects;
4. If **any** party wishes to challenge these tentative findings, the party shall file, as soon as possible but in any event before sentencing, and serve upon opposing counsel and the court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
5. Absent submission of the information required by paragraph 4 of this order, my tentative findings may become final;
6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 18th day of July, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge